

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate Salesperson's License Application of Breon L. Smith	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above matter came on for hearing before Administrative Law Judge Richard C. Luis ("ALJ") on February 24, 2006, at the Office of Administrative Hearings in Minneapolis. Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Commerce ("Department"). There was no appearance by or on behalf of Breon L. Smith ("Applicant", "Respondent"). The hearing record closed on February 24, 2006.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Whether the application of Breon Smith for real estate salesperson licensure should be denied because Mr. Smith has violated Minn. Stat. §§ 45.027, subds. 7(3)

and 7(4) and Minn. Stat. § 82.35, subd. 1(b) by demonstrating untrustworthiness, failure to provide complete information to the commissioner and engaging in fraudulent, deceptive and dishonest practices by failing to disclose all of his criminal record in connection with his application for licensure?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 24, 2006, an Order Denying License Application, Statement of Charges, and Notice of Hearing in this case was mailed to the Applicant at his last known address, which was the address he used to apply for a real estate salesperson's license – 591 Orleans Street, St. Paul, MN 55107. The Notice scheduled a hearing in this case for February 24, 2006.

2. The Order Denying License Application, Statement of Charges and Notice of Hearing contains the following language, on page three:

1. The Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

3. The Applicant did not appear at the hearing on February 24, 2006. He did not contact the Department, the Office of the Attorney General or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Applicant.

4. The allegations as set forth in the Order Denying License Application, Statement of Charges and Notice of Hearing are deemed proved and are incorporated into these Findings by reference.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction herein pursuant to Minn. Stat. §§ 14.50, 45.027 and 82.35.

2. The Applicant was given timely and proper notice of the Hearing in this matter, and the Department has complied with all procedural requirements of law and rule.

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled hearing.

4. Under Minn. R. 1400.6000, when a party defaults, the allegations and issues as set out in the Order Denying License Application, Statement of Charges and

Notice of Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true, and they are deemed proved.

5. Based on the facts set out in the Order Denying License Application, Statement of Charges and Notice of Hearing, the Applicant has violated Minn. Stat. §§ 45.027, subds. 7(3) and 7(4) and 82.35, subd. 1(b). As a result, it is appropriate to deny his application for real estate salesperson licensure.

6. An Order by the Commissioner of Commerce denying the license application for real estate salesperson by Breon L. Smith is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the application for licensure as a real estate salesperson by Breon L. Smith be DENIED.

Dated this 24th day of March, 2006.

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Default